

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

COSTAR REALTY INFORMATION,  
INC.,

Plaintiff,

v.

MODERN FONT APPLICATIONS LLC,

Defendant.

Case No. 21-cv-07521-VC

**ORDER DENYING MOTION TO  
DISMISS FOR LACK OF SUBJECT  
MATTER JURISDICTION,  
GRANTING JURISDICTIONAL  
DISCOVERY, DENYING MOTION TO  
SEAL, AND GRANTING MOTION TO  
FILE SUR-REPLY**

Re: Dkt. No. 26, 27, 45

1. MFA's motion to dismiss for lack of subject matter jurisdiction is denied. The provided records clearly show that CoStar merged with LoopNet in December 2016. So when MFA sent a notice of infringement to LoopNet, the named entity that survived the merger, CoStar, was reasonably apprehensive of being sued and brought this declaratory judgment action. CoStar is the proper plaintiff.

2. CoStar has made a colorable showing that the Court has personal jurisdiction over MFA based on the two lawsuits MFA initiated in the Central District of California, the origination of the demand letter from this district (even if it was ostensibly mailed from Utah), and the lawyer who conducts what appears to be a significant amount of MFA's patent enforcement work from California. That said, "a more satisfactory showing of the facts is necessary" before the Court is comfortable making that ruling. *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008) (quoting *Data Disc, Inc. v. Systems Technology Associates, Inc.*, 557 F.2d 1280, 1285 n.1 (9th Cir. 1977)). The parties may undertake three months of jurisdictional

discovery to further investigate the potential contacts mentioned in CoStar's opposition. Of special interest to the Court are any licensing agreements between MFA and California companies. CoStar might also consider investigating MFA's contacts with the Northern District specifically, as those contacts are relevant to both the jurisdictional and venue issues. On this record, MFA has not shown that CoStar is bound by a venue agreement in an NDA but jurisdictional discovery may also be taken on that issue. In addition, the Court is curious whether it would be relevant if the allegedly infringing conduct is taking place in California (and in the Northern District).

The motion to dismiss is denied without prejudice to filing a renewed motion within 14 days of the close of the jurisdictional discovery period.

3. The motion to seal is denied. Having merged with LoopNet in 2016, CoStar has the authority to speak on its behalf regarding the document at issue. Given that, both parties agree that the document need not be sealed. An unredacted version of the exhibit must be filed on the docket within 7 days.

4. The motion to file a sur-reply is granted. The sur-reply responds to a new point raised for the first time in MFA's reply brief that could have been made in the opening brief.

**IT IS SO ORDERED.**

Dated: March 23, 2022



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VINCE CHHABRIA  
United States District Judge